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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,504	07/01/2003	Steven C. Shanks	206-038	3500
33354	7590	07/19/2004		
SANDRA L. ETHELTON ETHELTON LAW GROUP, LLC. PO BOX 27843 TEMPE, AZ 85285-7843			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/612,504

**Applicant(s)**

SHANKS ET AL.

**Examiner**

Henry M Johnson, III

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities:

The pulse width is described inappropriately by using Hertz on page 5. The frequency by itself cannot define a pulse width without a duty cycle. The percent of on time (duty cycle) can define the pulse width as can a specific time such as nanoseconds.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is indefinite due to the first probe only being cited as having a first laser beam, yet the optics are cited as receiving multiple beams (line 9).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18, 20-22 and 30-34 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,267,779 to Gerdes. Gerdes discloses an apparatus for therapeutic laser treatment that includes handheld wands (Fig. 7) that each may deliver two wavelengths of laser energy, one in the near infrared range and the other in the visible range (Col. 8, line 54) from solid state diode lasers (Col. 7, lines 22-24). The beams are combined and delivered to the wands which include adjustable optics to focus and shape the beams (Col. 8, lines 31-34). The beam shape may be circular or rectangular (Col. 9, line 49), or a variety of other patterns. Rectangular is interpreted as being substantially linear. A controller for the sources is disclosed that may control the pulse parameters, including, continuous or pulsed, pulse duty cycle and duration of application for each of the radiation sources synchronously or independently with continuous operation possible by selection of a duty cycle of 100 percent (Col. 11, lines 3-8). Specifically mentioned is a pulse frequency of one hertz (Col. 11, line 63). The system is capable of emitting radiation at less than one watt; with 0 to 2.0 W specified for the infrared and 0 to 6 mW specified for the visible (Col. 9, lines 14 and 31). The wavelength disclosed for red is 635 nm (col. 9, line 39), for ultraviolet is 400 nm (Col. 9, line 38) and for infrared is 980 nm (Col. 9, line 27). The handheld wands are connected to the radiation sources within the controller cabinet (base) via optical fibers (Col. 8, lines 23-25).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 19 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,267,779 to Gerdes.

Regarding claim 19, Gerdes discloses a variety of spot shapes for the laser devices, but does not expressly disclose the shape of a plus-sign. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide optics for any shape pattern because Applicant has not disclosed that a specific pattern provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any radiation pattern that provided the radiation required for treatment because treatment is dependent on the dosage. Therefore, it would have been an obvious matter of design choice to modify the radiation pattern of Gerdes to obtain the invention as specified in claim 19.

Regarding claims 23-29, Gerdes discloses optics to produce a variety of spot patterns for the laser devices mounted on a distal portion of the wands, but does not expressly disclose optics mounted within a cavity of the wands. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to mount the shaping optics in any convenient location within the wand because Applicant has not disclosed that a specific location provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with independent of the optics mounting position because the pattern is not dependent on the mounting position if the optics. Therefore, it would have been an obvious matter of design choice to modify the optics mounting position of Gerdes to obtain the invention as specified in claims 23-29.

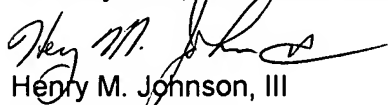
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (703) 305-0910. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III  
Patent Examiner  
Art Unit 3739